

Chief Judge Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLAY ROUECHE,

Defendant.

NO. CR07-0344 RSL

GOVERNMENT'S RESPONSE TO  
DEFENDANT'S MOTION TO STRIKE  
DECLARATION

**I. INTRODUCTION**

Defendant Clay Roueche pleaded guilty to charges of Conspiracy to Export Cocaine, Conspiracy to Import Marijuana and Conspiracy to Launder Monetary Instruments. He faces an advisory guidelines range of Life Imprisonment. Sentencing is scheduled for Wednesday, December 15, 2009 before the Honorable Chief Judge Robert S. Lasnik.

In preparation for sentencing, the Government submitted a declaration of Daniel LeClerc, along with declarations from several other co-conspirators and law enforcement agents. These declarations serve to describe the operation that Roueche oversaw on behalf of the United Nations Gang.

The defendant has submitted a motion to strike LeClerc's declaration as unreliable. In the alternative, the defendant has requested an opportunity to cross-examine LeClerc or force LeClerc to waive his attorney-client privilege so that the defendant's lawyer can talk to one of LeClerc's former lawyers. None of these requests are reasonable or necessary,

1 and thus the Government respectfully requests that the Court deny the requests and proceed  
2 to sentencing.

## 3 II. ISSUES

4 The defendant's lawyer, Mr. Maybrow, has contacted the undersigned AUSAs to  
5 explain that he, and presumably his client, disbelieve the declaration of Mr. LeClerc. In  
6 Mr. Maybrow's declaration, he specifically disbelieves LeClerc's assertion that members  
7 of the U.N. Gang threatened him. In an effort to bolster this assertion that LeClerc is lying,  
8 Mr. Maybrow provided the Government with a DVD that shows LeClerc enjoying the  
9 lifestyle that his drug-running for Roueche provided. Specifically, the DVD shows LeClerc  
10 driving a large boat, getting drunk with women and other drug dealers, and generally  
11 having a grand time. It shows him throwing around money and appearing to be happy and  
12 comfortable in his situation. Apparently, the DVD is provided to show that LeClerc was a  
13 happy drug smuggler who enjoyed partying with people, and did not seem at all threatened  
14 or concerned.

15 The Government, of course, does not doubt that LeClerc enjoyed the proceeds of his  
16 illegal behavior. LeClerc's brazen boasting about his wealth should not surprise the Court,  
17 nor does it have any bearing on whether LeClerc was, from time-to-time, threatened by  
18 U.N. Gang leaders in order to convince him to continue in this lifestyle. The two different  
19 descriptions of this drug dealer -- a brazen, drunk, happy LeClerc, and a threatened LeClerc  
20 -- are not mutually exclusive. In fact, the dichotomy makes perfect sense.

21 It is further the understanding of the Government that Mr. Maybrow has spoken to  
22 unnamed witnesses who do not wish to be identified for fear of facing criminal prosecution,  
23 and that these witnesses will claim that LeClerc did not have as much direct contact with  
24 Roueche as he has claimed, and that he never appeared threatened by Roueche. Thus, the  
25 defense claims, LeClerc's declaration is inherently unreliable because of his status as a  
26 cooperator and the uncorroborated nature of his testimony. In making this assertion,  
27 defendant's lawyer states, "The core procedural goals of sentencing should be fairness and  
28 accuracy."

1 It is difficult to conceive of a less fair and less accurate rebuttal to a sworn  
2 declaration of a known, identified, and documented witness, than a lawyer's summary of  
3 unnamed, unidentified witnesses' statements whose interviews are not available to anyone  
4 but the defendant's lawyers.

5 Moreover, Daniel LeClerc's statements that he ran cocaine for the defendant are,  
6 indeed, corroborated. In paragraph 21 of the Affidavit of Agent Peter Ostrovsky, attached  
7 to the Government's sentencing memorandum, the agent discusses the defendant's  
8 involvement in the large-scale exportation of cocaine.

9 In paragraph 24 of the same document, the agent discusses another witness'  
10 admission to smuggling cocaine to Canada with Birgis Brooks on Roueche's behalf.

11 In paragraph 27, Ostrovsky explains how LeClerc admitted to the involvement of  
12 "Pitbull," before investigators had identified Pitbull as a trusted transporter of United States  
13 Currency and cocaine for Roueche.

14 On page 18 of Exhibit 4, attached to the Government's sentencing memorandum,  
15 Canadian officials report the collection of drug ledgers at Roueche's apartment, indicating  
16 the sale of \$875,000 of cocaine.

17 On page 29 of the same document, another witness to Roueche's drug dealing  
18 describes the U.N. Gang, at Roueche's direction, maintaining "dial a dope lines," allowing  
19 for the easy ordering of cocaine by potential buyers.

20 Both Noe Camacho and Khanh Anh Truong (Pitbull) have pleaded guilty to cocaine  
21 offenses in connection with their involvement with Roueche.

22 Paragraph 20 of Exhibit 7, the declaration of Ken Davis, also confirms Roueche's  
23 involvement in the movement of cocaine into Canada.

24 Finally, simple mathematics and logic corroborate LeClerc's claims that Roueche  
25 moved huge amounts of cocaine from Mexico to Canada. Many witnesses corroborate his  
26 importation of thousands of pounds of marijuana into the United States, and the conversion  
27 of that marijuana into United States currency that was delivered to Pitbull in California.  
28 The arrests of Camacho, Pitbull, and the investigation of Omar Gallegos also serve to

1 corroborate the conversion of those U.S. funds to cocaine. It is inconceivable that the huge  
2 shipments of marijuana were converted into anything less than the amounts of cocaine  
3 described by LeClerc and, in fact, undoubtedly resulted in loads and pilots that were never  
4 uncovered by the United States. The argument that LeClerc's declaration has any real  
5 impact on the Court's sentence is muted by this corroboration.

6 If the defendant wishes to contest LeClerc's threat claims by presenting witnesses  
7 who will say that he never complained to them about being threatened, and who will say  
8 that he seemed to revel in the money he made while working for Roueche, they are  
9 certainly free to do so. It does not require the Court to strike LeClerc's declaration, mostly  
10 because such testimony does not really contradict LeClerc's declaration. The defendant's  
11 proposed contradictory evidence really amounts to the same argument that a domestic  
12 violence defendant might make -- i.e., the victim never complained of being beaten to  
13 anyone else, and always put on a happy face when out on the town, therefore she is lying  
14 when she says she was beaten in private. The argument is illogical.

### 15 **III. ARGUMENT**

#### 16 **A. The Defendant Never Sought A Writ To Ensure LeClerc's Presence**

17 Had the defendant truly believed that cross-examination of LeClerc would produce  
18 helpful information, he could have requested that the Court issue a writ to ensure LeClerc's  
19 presence at sentencing. He could have issued a subpoena and called LeClerc as a witness at  
20 the sentencing. None of this occurred. Rather, defendant's lawyer has found witnesses  
21 who apparently dislike LeClerc and want to discredit him by showing DVDs of him  
22 enjoying his ill-gotten money. If the defendant truly believed that the engine of cross-  
23 examination truly would have uncovered something exculpatory via LeClerc, they would  
24 have made sure he was here.

#### 25 **B. The Defendant's Plea Corroborates LeClerc**

26 No limitation shall be placed on the information concerning the background,  
27 character, and conduct of a person convicted of an offense which a court may receive and  
28 consider for the purpose of imposing an appropriate sentence. Title 18, United States

1 Code, Section 3661. The defendant's claim that, "the Ninth Circuit has held that a  
2 heightened standard of proof is required at sentencing where the court's determination may  
3 have a disproportionate impact on the ultimate sentence," is incredibly misleading. The  
4 case of United States v. Restrepo, 946 F.2d 654 (9th Cir. 1991), on which the defendant  
5 relies in making this claim, has been refined and explained by subsequent cases. United  
6 States v. Jordan, 256 F.3d 952 (9th Cir. 2001). Higher levels of proof were suggested in  
7 cases where a defendant's mandatory guidelines calculation was affected significantly. No  
8 caselaw exists in the post-Booker era to suggest that a Court should require a higher  
9 standard of proof in reviewing the sentencing factors under Title 18, United States Code,  
10 Section 3553, particularly where the Government's suggested sentencing recommendation  
11 is below its own guidelines calculation and *within* the defendant's own calculation of his  
12 guidelines.

13 A district court's evaluation of the reliability of evidence is reviewed for an abuse of  
14 discretion. United States v. Ponce, 51 F.3d 820, 828 (9th Cir. 1995). In Ponce, the  
15 Government used the uncorroborated statement of a co-conspirator to increase the  
16 defendant's criminal history category, not his advisory guidelines range. The Court refused  
17 to change the criminal history category, holding that, "because the government has failed to  
18 point to any evidence corroborating Ponce's alleged participation in marijuana distribution,  
19 it was error to calculate his sentence using a category III criminal history."

20 In the present case, significant evidence confirms Roueche's participation in cocaine  
21 smuggling, as well as his leadership role in an organization that regularly used force and  
22 threats to achieve its objectives. Quite simply, the defendant has confessed to participating  
23 in a Conspiracy to Export Cocaine. This plea corroborates the most important parts of  
24 LeClerc's declaration, specifically that he flew loads of cocaine for the defendant. The  
25 defendant's quarrels with LeClerc's declaration are specific to issues such as the numbers  
26 of loads, whether LeClerc was threatened, and how much direct contact LeClerc had with  
27 the defendant. None of these concerns should result in the striking of LeClerc's  
28 declaration. As with any information presented at sentencing, the Court can certainly parse

1 through LeClerc's declaration and determine what information is reliable and corroborated  
 2 and what information is not. The Government would simply request that the Court make a  
 3 record of what information from LeClerc's declaration it has relied upon, and what  
 4 information it has rejected.

#### 5 IV. CONCLUSION

6 The Court should deny the defendant's motion to strike LeClerc's declaration and all  
 7 other suggested remedies. The Government reiterates its recommendation that the Court  
 8 impose 30 years in prison.

9 DATED this 11th day of December, 2009.

10 Respectfully submitted,

11 JENNY A. DURKAN  
 12 United States Attorney

13 s/ Roger Rogoff  
 14 ROGER ROGOFF  
 15 Assistant United States Attorney  
 16 WSBA #23362  
 17 United States Attorney's Office  
 18 700 Stewart Street, Suite 5220  
 19 Seattle, Washington 98101-1271  
 20 Telephone: (206) 553-4330  
 21 Facsimile: (206) 553-0755  
 22 Email: Roger.Rogoff@usdoj.gov

23 s/ Susan M. Roe  
 24 SUSAN M. ROE  
 25 Assistant United States Attorney  
 26 WSBA #13000  
 27 United States Attorney's Office  
 28 700 Stewart Street, Suite 5220  
 Seattle, Washington 98101-1271  
 Telephone: (206) 553-1077  
 Facsimile: (206) 553-4440  
 E-mail: Susan.Roe@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2009 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s). I hereby certify that I have served the attorney(s) of record for the defendant(s) that are non CM/ECF participants via telefax.

s/Lindsay Erickson

LINDSAY ERICKSON

Legal Assistant

United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

Phone: (206) 553-4377

Fax: (206) 553-4440

E-mail: Lindsay.Erickson@usdoj.gov